

# **EXHIBIT K**

Page 1

1                   UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF NEW YORK

3                 NIKE, INC.,                           |  
4                 Plaintiff,                           |  
5                 |  
6                 V.                                    | Civil Action No.:  
7                 |    | 1:22-cv-00983-VEC  
8                 STOCKX LLC,                           |  
9                 Defendant.                           |  
10                \*\*\*\*\*  
11                ORAL AND VIDEOTAPED DEPOSITION OF  
12                STEVEN McNEW  
13                AUGUST 8, 2023  
14                \*\*\*\*\*  
15                ORAL AND VIDEOTAPED DEPOSITION of  
16                STEVEN McNEW, produced as a witness at the  
17                instance of the Defendants, and duly sworn,  
18                was taken in the above-styled and numbered  
19                cause on August 8, 2023, from 9:10 a.m. to  
20                5:40 p.m., before Mandy A. Schneider, CSR,  
21                RPR, in and for the State of Texas, recorded  
22                by machine shorthand, at the offices of  
23                DLA PIPER, 845 Texas Avenue, Suite 3800,  
24                Houston, Texas, pursuant to the Federal Rules  
25                of Civil Procedure and the provisions stated  
                  on the record or attached hereto; that the  
                  deposition shall be read and signed.

Page 2

1 A P P E A R A N C E S  
2

3 FOR THE PLAINTIFF:

4 MICHAEL FLUHR (Real-time)  
5 DLA PIPER  
6 555 Mission Street, Suite 2400  
7 San Francisco, California 94105-2933  
8 415.615.6011  
9 michael.fluhr@dlapiper.com

10 FOR THE DEFENDANT:

11 CHRISTOPHER FORD (Real-time)  
12 KATHRYN SABA  
13 DEBEVOISE & PLIMPTON  
14 650 California Street  
15 San Francisco, California 94108  
16 415.738.5705  
17 csford@debevoise.com  
18 ksaba@debevoise.com

19 ALSO PRESENT:

20 CYNTHIA JOSEPH, The Videographer  
21  
22  
23  
24  
25

Page 43

1           Q.       So would you have to decompile  
2       the smart contract code in order to access  
3       this link?

4           MR. FLUHR: Objection.

5           A.       In the version I received I           09:48:42  
6       believe you had to.

7           Q.       (BY MR. FORD) What do you mean  
8       by in the version you received?

9           A.       I don't know what consumers  
10      might have been given access to. I -- I was     09:48:51  
11      given access to a version that required a  
12      decompilation before being able to review it  
13      in human form.

14          Q.       So you didn't do any work to  
15      determine what consumers might have had       09:49:05  
16      access to aside from what you had access to;  
17      is that right?

18           MR. FLUHR: Objection.

19          A.       I -- I didn't interview any  
20      custodians or customers to find out what they     09:49:14  
21      had access to, no.

22          Q.       (BY MR. FORD) Are you aware of  
23      any actual or potential Vault NFT purchasers  
24      who accessed this JSON file?

25          A.       I wouldn't know one way or the       09:49:26

Page 44

1 other.

2 Q. And just so I understand, did  
3 you personally, in the course of preparing  
4 your opinions, access this JSON file via the  
5 blockchain or anything other than this Nike 09:49:40  
6 production document?

7 MR. FLUHR: Objection.

8 A. I did not personally follow  
9 that JSON file link, no.

10 Q. (BY MR. FORD) So just to 09:49:48  
11 clarify the question, I'm not asking about  
12 following the link that's set out in capture  
13 URL here.

14 I'm asking: Did you do  
15 anything to find where in the smart contract 09:49:58  
16 this link appears?

17 MR. FLUHR: Objection.

18 A. So our work certainly would  
19 have been to examine the code, examine  
20 Etherscan, identify what's in the metadata, 09:50:11  
21 and review what was in the metadata.

22 I didn't personally follow the  
23 link, but the link address purports with the  
24 representation of the link in the exhibit  
25 with the description that's contained here. 09:50:28

Page 78

1       there are definitions that we could split  
2       hairs about in terms of is  
3       fungible/nonfungible a blockchain term or  
4       isn't it, is an NFT a blockchain term or  
5       isn't it.    10:35:42

6    I would suggest that across all  
7       the clients I work with, NFTs are generally  
8       thought to be blockchain-based assets.

9    Q.       Are the clients you work with  
10      generally corporations?    10:35:53

11    A.       It's a mix. It's corporations.  
12       So Fortune 500 and -- and others. It is  
13       marketplaces, creators, innovators. It spans  
14       the gamut.

15    Q.       What work did you do in                                  10:36:08  
16       connection with your report or otherwise, if  
17       any, to understand how the term NFT is  
18       understood by consumers?

19    A.       So I'm not sure I understand  
20       the question. Could you --    10:36:25

21    Q.       What part of the question do  
22       you not understand?

23    A.       -- rephrase for me?  
24    Well, so you're saying what  
25       work did I do, and I suppose there is a                                  10:36:31

Page 79

1        colloquial understanding that in the context  
2        of Vault NFTs and in the context of NFT  
3        projects that we're fairly specifically  
4        talking about blockchain-based digital  
5        assets.

10:36:52

6              So I didn't interview others or  
7        ask them their understanding of whether or  
8        not an NFT is a digital-based asset.

9        Everything that I read in this case is really  
10      pointing to it is a blockchain-based NFT.

10:37:07

11              I hope that answered the  
12      question.

13              Q.        It's interesting, but it  
14      doesn't quite answer the question, so let me  
15      try to ask it a different way.

10:37:20

16              Did you do any work in this  
17      case specifically to understand how the term  
18      NFT is understood by consumers?

19              MR. FLUHR: Objection.

20              A.        I think NFTs in this case are  
21      understood to be what I see in other cases,  
22      other examples of projects, where there is an  
23      understanding that this is an NFT project.

10:37:32

24              Representations were made about the NFT being  
25      tied one-to-one to the blockchain.

10:37:53

Page 80

1                   I think consumers believed  
2                   that, thought that, and bought a bundle of  
3                   rights and access when acquiring a digital  
4                   asset, an NFT in this case.

5                   So I'm, sorry, Counselor, I'm           10:38:06  
6                   struggling to make sure I hit the answer, but  
7                   just it's -- does that help?

8                   Q.        (BY MR. FORD) So you said that  
9                   you think that consumers believed something,  
10                  right? That was your testimony.           10:38:21

11                  What work did you do to arrive  
12                  at that conclusion or opinion that consumers  
13                  believed the things that you think they  
14                  believed?

15                  MR. FLUHR: Objection.                   10:38:31

16                  A.        All of those things detailed in  
17                  my report: the review of all of the evidence  
18                  in the case, the external materials, the  
19                  social media posts and sites, the discord  
20                  server content, the internal communications;   10:38:43  
21                  all of those collectively tell a story about  
22                  what was represented, and also what,  
23                  therefore, consumers believed to be the asset  
24                  they were purchasing.

25                  Q.        (BY MR. FORD) Did you ask any   10:38:57

Page 81

1 consumers about any of those pieces of  
2 information that you are referencing?

3 A. I did not interview any  
4 consumers. I looked at post comments,  
5 internal and external, that were made about 10:39:11  
6 the NFTs and what those expectations were  
7 voiced as.

8 Q. Aside from interviews, did you  
9 do any surveys of any kind of consumers?

10 A. I did not. 10:39:23

11 Q. Have you ever spoken to anyone  
12 in any context who you understand to have  
13 been a purchaser of a Vault NFT?

14 MR. FLUHR: Objection.

15 A. Not that I'm aware of. 10:39:37

16 Q. (BY MR. FORD) Have you ever  
17 spoken to anyone in any context who you  
18 understand to have been a prospective  
19 purchaser of a Vault NFT?

20 MR. FLUHR: Objection. 10:39:46

21 A. Really tough to answer that  
22 speculatively. Not -- not that I know of.

23 Q. (BY MR. FORD) You've never had  
24 a conversation with anyone about -- never  
25 mind. Let me withdraw that. 10:39:58

Page 82

1                   Have you ever conducted  
2 consumer perception research more generally  
3 outside of the context of this case?

4                   A.       I have not and didn't do it  
5 here either as a formality, right. It was           10:40:09  
6 more understanding what was represented to a  
7 consumer, what the consumer voiced their  
8 understanding of that to be, and then the  
9 behaviors and whether or not those behaviors  
10 aligned with those beliefs.                          10:40:23

11                  Q.       And when you say what the  
12 consumer voiced their understanding of that  
13 to be, are those the consumer statements that  
14 are cited specifically in your opening and  
15 rebuttal reports?                                      10:40:36

16                  A.       Right, among others I may have  
17 read during the course of the investigation,  
18 yes.

19                  Q.       Are there any statements by  
20 consumers that you relied upon in forming       10:40:43  
21 your opinions that are not set out in your  
22 opening or rebuttal reports?

23                   MR. FLUHR: Objection.

24                  A.       I did my best to make sure that  
25 anything impactful was included.                      10:40:56

Page 114

1 Aren't terms I'm particularly familiar with.  
2 It's really helping a company determine their  
3 value for purposes of acquisition or  
4 fundraising who might be an NFT platform  
5 provider or interact significantly with NFTs 11:12:46  
6 as sort of one-use case.

7 The second, not evaluate -- not  
8 placing a value on the company but rather  
9 a -- a set of NFT assets as a collection in  
10 formatting -- formulating a value to that or 11:13:01  
11 on a specific individual NFT and placing a --  
12 a value on that.

13 Q. (BY MR. FORD) And am I --  
14 well, let me just ask: Is the process of  
15 valuing a specific individual NFT different 11:13:14  
16 than the process that you would do to value a  
17 collection of NFTs?

18 A. There are differences, yes. So  
19 the way I think of it is at an NFT level,  
20 there's less to evaluate; at a project, 11:13:27  
21 slightly more; at a company, even more.

22 Q. What steps do you take when  
23 you're asked to value a specific individual  
24 NFT to arrive at a result?

25 A. So a ton of data collection. 11:13:41

Page 115

1       As you might imagine, a lot of that is  
2       related to its trading history, trading  
3       patterns, identifying comparables,  
4       understanding the project, what is the  
5       utility of the project, what do consumers      11:13:55  
6       find attractive about that or collectible  
7       about that, how unique is that individual  
8       token, what are the characteristics of it  
9       that make it unique, does it compare in any  
10      way to other any other token.                    11:14:06

11                   So there's a whole multitude of  
12          variables that come into that sort of  
13          valuation that ultimately drive an opinion  
14          about what we think or I think that  
15          particular value is.                            11:14:18

16                   Q.       Going back to the two different  
17          categories of tickets that your project  
18          mints, you noted that in some cases, there is  
19          imagery that is designed to be associated  
20          with the NFT; is that right?                    11:14:33

21                   A.       So I would say they're images  
22          associated with either. There's a difference  
23          between those two. So for some of our  
24          clients, they see -- they -- they have a need  
25          to offer tickets as a form of entry that give    11:14:47

Page 121

1       number of different things that NFTs can  
2       represent ownership of and you distinguish  
3       between physical assets such as real estate  
4       and fine art and more digitally native  
5       products.

11:32:38

6                  Is that fair?

7       A.       Correct.

8       Q.       Okay. So are there companies  
9       that you have advised in the course of your  
10      work that are using NFTs to represent  
11      ownership of physical assets as you describe  
12      in your report?

11:32:46

13      A.       Digital assets, certainly. I'd  
14      have to really double-check on the physical  
15      asset side specifically.

11:33:05

16      Q.       Sitting here today, can you  
17      recall any?

18      A.       None immediately come to mind.  
19      Sorry, the hesitation is just, there are a  
20      lot of clients over a long period of time,  
21      and I'm trying to recall specifically, but I  
22      can't think of any off the top of my head.

11:33:17

23      Q.       Okay. So here I notice that in  
24      the discussion of digitally native products  
25      you included a couple of examples, profile

11:33:46

Page 144

1       about this language?

2           A.       I reviewed a lot of material.

3       I don't remember specifically that language.

4           Q.       Was it -- would it be relevant  
5       to understanding the meaning that StockX put      12:01:35  
6       on particular terms in StockX's presentations  
7       to understand what employees testified that  
8       that language meant?

9           MR. FLUHR: Objection.

10          A.       Yes, but I think, again, the        12:01:50  
11       end result and the conversation itself tells  
12       the narrative that, as an independent  
13       observer, StockX was focused on the design  
14       element of these NFTs.

15           They talked about it                           12:02:08  
16       internally, and that's what ultimately ended  
17       up as the image in the product pages.

18          Q.       (BY MR. FORD) And no consumer,  
19       to your knowledge, ever saw this  
20       presentation, correct?                             12:02:18

21          A.       I don't know.

22          Q.       Do you have any reason to  
23       believe any consumer or actual or prospective  
24       purchaser of the Vault NFTs ever saw this  
25       slide deck or presentation?                        12:02:26

Page 145

1 MR. FLUHR: Objection.

2 A. I have no idea.

3 Q. (BY MR. FORD) The other  
4 example that you gave was a chat -- an  
5 internal chat on Page 46 of your report.

12:02:43

6 A. Yes.

7 Q. And this was an -- an internal  
8 Slack thread among StockX employees, correct?

9 A. Correct.

10 Q. And is -- was it -- I believe 12:03:03  
11 it was your testimony that you relied on this  
12 in forming your opinion that StockX -- well,  
13 let me -- let me actually find the testimony  
14 because that would be best.

15 Right. So let me strike that 12:03:49  
16 and restart the question.

17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 MR. FLUHR: Objection.

24 A. It is another example, yes.

25 Q. (BY MR. FORD) Okay. And where 12:04:22

Page 147

1 and things like that early on.

2 Q. But not -- you decided not to  
3 include any of those in your report?

4 MR. FLUHR: Objection.

5 A. I don't recall any of them 12:05:45  
6 being in the report as examples.

7 Q. (BY MR. FORD) And why not?

8 A. So my opinion is that great  
9 care and time and attention was spent  
10 designing and architecting an NFT image that 12:05:57  
11 conveyed to a consumer something more than a  
12 claims ticket or some basic utility, but that  
13 there was thought put into the careful design  
14 of an image that then spoke to a consumer in  
15 a way that led them to believe it was 12:06:18  
16 something more desirable, more collectible.

17 Q. And I think we've already  
18 discussed, though, that you did not do  
19 anything to speak to or survey consumers to  
20 understand whether anyone actually did 12:06:31  
21 believe that it was something more desirable  
22 or more collectible, correct?

23 A. I did not interview anybody,  
24 but, look, this is consistent across nearly  
25 every project I've worked on, where the 12:06:42

Page 157

1       that was going to be burned in a short period  
2       of time and, therefore, no longer available.

3 So that was the basis of --  
4 that was the whole opinion, right, related to  
5 the imagery, and that care was taken to 12:16:24  
6 develop that and that accordingly it was  
7 unclear because of that changing terminology  
8 or that changing description what rights were  
9 actually conveyed to the consumer.

10 Q. So I'm a little confused, 12:16:40  
11 because I asked you what you put a lot of  
12 weight into and you returned to the concept  
13 that there was changing terminology and a  
14 changing description, which I think you had  
15 just told me was what you didn't put a lot of 12:17:07  
16 weight into.

17 MR. FLUHR: Objection.

18 MR. FORD: Sorry, I hadn't  
19 finished the -- the question.

20 Q. (BY MR. FORD) So I'm just 12:17:17  
21 trying to understand specifically what  
22 evidence you reviewed in connection with your  
23 work in this case that informed your opinion  
24 that consumers believed that the Vault NFT  
25 images were worthy of sharing. 12:17:34

Page 158

1                   MR. FLUHR: Objection.

2                   A.       So -- so I think we keep coming  
3                   back to this concept that there's some sort  
4                   of formulaic approach here that has measured  
5                   weights and balances, and I -- I don't think      12:17:47  
6                   it might work that way at all.

7                   I think it might work as  
8                   understanding the totality of what happened,  
9                   and as part of that, understanding the images  
10                  that were used, how they were designed, how     12:17:59  
11                  they were conveyed and ultimately shared with  
12                  consumers mattered.

13                  And then related to the rights  
14                  and benefits, noting that in the context of  
15                  highly stylized images and collectible        12:18:16  
16                  images, there is often a package or a bundle  
17                  of rights and benefits. And along with that  
18                  includes rights whether legal, legally  
19                  enforceable or not, to use those images in  
20                  some capacity or some way.                      12:18:32

21                  And so my report gives two  
22                  examples of two projects that conveyed what  
23                  that is to their consumer. So that was the  
24                  basis for it.

25                  Q.       (BY MR. FORD) So we're              12:18:46





Page 204

1           A.        Correct.

2           Q.        You also offer a number of  
3           opinions about whether or not consumers would  
4           have had a clear understanding of what the  
5           Vault NFTs were; is that right?                   13:49:59

6           MR. FLUHR: Objection.

7           A.        I think that's fair.

8           Q.        (BY MR. FORD) But as I think  
9           we've discussed a number of times, consumers  
10          would not have seen StockX's internal              13:50:09  
11          documents when reaching their understandings  
12          or thoughts about Vault NFTs, right?

13          A.        I can't know what the consumer  
14          would see. But tests were done. So I -- I  
15          don't know that I can honestly answer that      13:50:22  
16          question.

17          Q.        Well, let me ask it a different  
18          way.

19           Of the internal StockX  
20          documents that you considered, are you aware      13:50:28  
21          of any of those that were seen by actual or  
22          prospective purchasers of Vault NFTs?

23          A.        I honestly can't know what they  
24          might have done, shared, tested the market,  
25          shared what the market -- I -- I don't know.      13:50:44

Page 205

1           Q.       But as to the internal StockX  
2 documents that you considered, was it your  
3 understanding as you were considering them  
4 that any actual or prospective purchaser of a  
5 Vault NFT had seen that document?                  13:50:55

6           A.       I think my view and opinion is  
7 that it's possible they could have seen it.  
8 I can't know whether they did or didn't, so  
9 that didn't heavily factor to anything I -- I  
10 did.    13:51:11

11          Q.       Did you, in reaching your  
12 opinions, assume that any of the internal  
13 StockX documents that you saw had, in fact,  
14 been seen by consumers?

15          A.       I -- I wouldn't have made an              13:51:21  
16 assumption either way.

17          Q.       So what did you do in reaching  
18 your conclusions about what consumers  
19 understood about the Vault NFTs to ensure  
20 that as you were reaching those opinions you      13:51:36  
21 were considering only the information that  
22 consumers would have seen and not internal  
23 StockX materials that consumers would not  
24 have seen?

25    MR. FLUHR: Objection.                      13:51:48

Page 206

1           A.       So that was a really long  
2       question. Let me see if I can get this  
3       right.

4           Q.       (BY MR. FORD) I can repeat it  
5       if that would be easier.                                  13:51:56

6           A.       Please.

7           Q.       Okay. What did you do in  
8       reaching your conclusions about what  
9       consumers understood about the Vault NFTs to  
10      ensure that as you were reaching those                 13:52:05  
11      opinions you were considering only the  
12      information that consumers would have seen  
13      and not internal StockX information that  
14      consumers would not have seen?

15           MR. FLUHR: Objection.                                  13:52:18

16           A.       Understood. So to me there are  
17      multiple angles of this, right?

18                   There's the internal what did  
19       StockX do, what were their actions, what did  
20       they ultimately produce and deliver.                 13:52:33

21                   And then to your point, there  
22       is what did the consumer likely see and  
23       understand about this.

24                   And within that category, there  
25       are definitive items, how it was represented         13:52:44

Page 207

1       on a website, the influencers that were --  
2       were hired in talking about the platform or  
3       the project, the experience the consumer  
4       themselves would have had, right, logging  
5       into the site looking at the PDP page -- or           13:53:00  
6       the PDP, looking at the products and  
7       experiencing the sale, the waiting room, the  
8       road map, all of those kinds of things that a  
9       consumer would experience and the sort of  
10      connecting all of those dots with what                  13:53:13  
11      actually was delivered in the end.

12           So I don't know if I'm quite  
13       answering your question, but essentially it's  
14       isolating what that consumer should have  
15       normally seen and therefore understood to be       13:53:23  
16       the product that was being offered.

17       Q.       (BY MR. FORD) As you were  
18       doing that, isolating what the consumer  
19       should have normally seen, had -- when --  
20       sorry, let me strike that and rephrase the       13:53:38  
21       question.

22           At the time when you were  
23       evaluating these public materials about what  
24       a consumer would have normally seen and  
25       understood, had you already reviewed internal       13:53:50

Page 208

1 StockX documents and materials?

2 MR. FLUHR: Objection. Sorry.

3 Objection. Go ahead.

4 A. I wouldn't -- I don't know that  
5 I would really know what the sequence was. I 13:54:02  
6 suspected -- I suspect it was mostly in  
7 parallel.

8 It was sort of not categorized  
9 as internal versus customer. It was sort of  
10 here's all of the evidence and let's wade 13:54:13  
11 through it and look at them in context and  
12 form opinions based on what we see.

13 Q. (BY MR. FORD) Okay. Let's  
14 talk a bit about this design process that  
15 you, I think, were just referring to. And we 13:54:30  
16 can go to Page 54 of your report.

17 And sorry, just for the record,  
18 Exhibit 1, 50 -- Page 54.

19 Are you with me?

20 A. Page 54, yes, sir. 13:54:54

21 Q. Okay. You write under the blue  
22 heading: "For the Vault NFT planning,  
23 design, development, and architecture, StockX  
24 utilized the Minimum Viable Product ('MVP')  
25 methodology." 13:55:12

Page 220

1       was to evaluate the StockX NFT offering,  
 2       their actions, product quality, and customer  
 3       reaction to that. So I didn't evaluate  
 4       deeply any other NFT platforms or projects.

5           Q.       (BY MR. FORD) You did offer           14:07:06  
 6       comparisons, though, to the Bored Ape Yacht  
 7       Club and Azuki, right?

8           A.       For certain aspects, yes, and  
 9       also more largely to my experience broadly in  
 10      the space with customers ranging from           14:07:20  
 11      Fortune 500 to influencers and platforms,  
 12      yes.

13           Q.       Why would it not have been  
 14      relevant for you to understand what your  
 15      client, Nike, who retained you here, had as    14:07:31  
 16      an experience when launching their own NFT  
 17      platform?

18                  MR. FLUHR: Objection.

19           A.       Well, so I -- I would probably  
 20      first qualify that, I don't see Nike as a    14:07:41  
 21      client. I see my role here to look at -- I  
 22      know that sounds Pollyanna but it's true.

23                  My job is to look at the real  
 24      facts of this and to form opinions about what  
 25      I think happened here. What Nike may or may    14:07:54

Page 244

1           Q.       (BY MR. FORD)  And when you  
2        were forming that opinion, did you consider  
3        other companies' models around NFT custody  
4        and trading?

5           A.       So I would say generally                   14:49:30  
6        considered the behaviors and the patterns and  
7        the offerings of a StockX to other NFT  
8        companies, platforms, and projects.

9           Q.       Which other companies,  
10       platforms, and projects?                                  14:49:46

11          A.       Many of my clients that we've  
12        talked about across the industry, whether  
13        they be Fortune 500, other similar companies  
14        to StockX, innovators/creators that have  
15       hired us to do analysis or consulting or some    14:50:02  
16       sort of work.

17               So it's sort of in comparison  
18        to the rest of that understanding across the  
19       NFT population.

20          Q.       I -- I -- I think we've already    14:50:11  
21       addressed this, but this is where I'm  
22       struggling.

23               Are you able to identify for me  
24       any of those clients that you used as --  
25       whose platforms you used as comparators to      14:50:21

Page 253

1       could have, and weighed it in determining,  
2       you know, what my ultimate opinion is.

3                 Q.       So looking at your Materials  
4       Considered, which is Exhibit A to your first  
5       report, I noticed a number of StockX web                  14:59:08  
6       pages, and if we look on page -- well, it's  
7       actually Page 3 but it's numbered as Page 2  
8       of your Materials Considered, you reviewed  
9       one page about midway down,  
10      "StockX.com/help/articles, what are the                  14:59:40  
11      rewards and benefits of owning NFTs on  
12      StockX."

13                 Do you see that?

14                 A.       I'm sorry, I don't. Oh, I see  
15      it, yes.    14:59:49

16                 Q.       Okay. So -- so you did review  
17      an article specific to rewards and benefits  
18      when you were forming your opinion; is that  
19      right?

20                 A.       Sure.    15:00:01

21                 Q.       Were you aware that StockX  
22      issued a more general Help and FAQ page on  
23      the Vault NFTs?

24                 A.       I'm generally aware that those  
25      have changed over the course of time, but I                  15:00:13

Page 254

1       don't know specifically that I have every  
2       version and every date of every version.

3           Q.       Were you aware that StockX  
4       issued an FAQ specifically explaining Vault  
5       NFT additions?    15:00:28

6           MR. FLUHR: Objection.

7           A.       I think I saw that.

8           Q.       (BY MR. FORD) But did not list  
9       that in your Materials Considered?

10          A.       Yeah, I'm just trying to                          15:00:37  
11       remember. I saw so many FAQs, but I don't  
12       know if -- yeah, I don't recall specifically  
13       which one you're referring to and if it was  
14       one I looked at or not.

15          Q.       Uh-huh.    15:00:47

16           I'll -- I'll represent to you  
17       that it is not cited either anywhere in your  
18       report or in your Materials Considered.

19           There was also an FAQ that  
20       StockX issued explaining the difference                          15:00:55  
21       between Vault NFTs and Experiential NFTs.

22           Do you recall seeing that?

23           MR. FLUHR: Objection.

24          A.       I -- I wouldn't know without  
25       seeing it, if it's something that looks                          15:01:05

Page 255

1       familiar or not.

2                     Q.       (BY MR. FORD)   Okay. I'll  
3                     represent to you that that also wasn't cited  
4                     either anywhere in your report or in your  
5                     Materials Considered.                     15:01:13

6                     Do you believe that you may  
7                     have seen those documents and simply did not  
8                     include them in your report?

9                     MR. FLUHR:   Object.

10          A.       Yeah, I -- I don't know. I                     15:01:20  
11                     would have to see them to see if they look  
12                     familiar and if I saw them in any way.

13          Q.       (BY MR. FORD)   Okay. Let's put  
14                     this aside for the moment.

15                     Are you familiar with the NBA?                     15:01:31

16          A.       Yes.

17          Q.       National Basketball  
18                     Association?

19          A.       Yes, sir.

20          Q.       Are you familiar with the NBA's                     15:01:37  
21                     Top Shot NFT project?

22          A.       Generally familiar.

23          Q.       Did you consider in any way the  
24                     NBA's Top Shot NFT when forming your opinions  
25                     in this case?                                     15:01:50

Page 259

1

[REDACTED]

16

(Marked McNew Exhibit No. 16.)

17

Q. (BY MR. FORD) I'm going to

18

hand you what I've marked as Exhibit 16,

19

which is a document bearing the Bates

20

No. STX0094175, and I'll ask if you recognize 15:06:22

21

this document.

22

Take the time that you need to

23

flip through it.

24

A. Would you like me to review or

25

browse and be prepared to comment, or fully

15:06:50

Page 260

1       read?

2                 Q.       So I -- I'd first like to know  
3       if you recall reviewing this document in the  
4       course of forming your opinions in this case?

5                 A.       It does not immediately look           15:06:59  
6       familiar.

7                 Q.       Okay. We can -- we can just  
8       step through certain representations. Let's  
9       look at the second page of the document which  
10      has a Bates number ending in 176.                   15:07:11

11                A.       Yes, sir.

12                Q.       There's a question, "Where can  
13      I check the blockchain ledger? Why don't I  
14      see my transaction in the ledger?"

15                Do you see that?                           15:07:21

16                A.       I see that.

17                Q.       And then the answer provided  
18      below it reads: "You can check the  
19      blockchain ledger for each StockX NFT through  
20      Etherscan. Since StockX maintains custodial       15:07:29  
21      authority of all NFTs traded on the platform,  
22      you will not see the transaction history in  
23      the blockchain ledger.

24                "You can, however, always see  
25      the transaction history on the StockX product    15:07:40

Page 261

1       page. Transaction history is blended for all  
2       editions and will not show trades on an  
3       individual token basis.

4                                  "In the future, customers will  
5       have the ability to withdraw an NFT from                   15:07:51  
6       StockX to an external personal wallet and any  
7       withdrawal will be posted below."

8                                  Do you see that?

9                                  A. I do see that and, I'm sorry,  
10      is there a date that this would have been               15:08:01  
11      live or active?

12                                 Q. So if you look towards the --  
13      let's see.

14                                 If you look towards the back --  
15      this is going to take a minute, but we can go           15:08:37  
16      through that. So on page that ends in 194,  
17      you see there's a date of January 18th, 2022,  
18      at the top of that page?

19                                 A. Got it.

20                                 Is there no date specific to           15:08:58  
21      these first pages?

22                                 Q. So I'm -- I'm getting there for  
23      you just if you --

24                                 A. Okay. Sorry.

25                                 Q. No, it's okay.                       15:09:04

Page 262

1                   So -- and then there is a  
2 launch schedule -- are you familiar with sort  
3 of a product launch schedule?

4                 A.     Yes, sir.

5                 Q.     Okay. So do you see here what       15:09:10  
6 looks like a -- a product or marketing launch  
7 schedule?

8                 A.     What page would that be?

9                 Q.     So starting on 194, you see,  
10 "Twitter 1:00 p.m. EST," a series of Tweets.      15:09:20

11                          Page 195, "Instagram feed  
12 1:00 p.m. EST," and some text.

13                          Over the next couple pages,  
14 IGS. On Page 198, "Discord 1:00 p.m. ET,"  
15 and some text.    15:09:38

16                          Do you see all of that?

17                 A.     I see all of that.

18                 Q.     Okay. And then as it  
19 continues, you see still under that heading  
20 "Discord 1:00 p.m. ET," all of that text      15:09:51  
21 continues to "Introducing the vault"; "How it  
22 works"; "Frequently asked questions." That's  
23 on Page 199.

24                 A.     And, I'm sorry, was there a  
25 question about a development schedule or --      15:10:11

Page 263

1 Q. No. I mean, I -- I'm trying to  
2 give -- I'm trying to respond to your  
3 question, and I'm just --

4 A. I understand.

5 Q. Right. So at -- and then it 15:10:20  
6 continues onto Page 200. And it says: "If  
7 you need help with our vault token, our team  
8 is here to support hyperlinks StockX.com/help  
9 after those initial FAQs."

10 A. Okay. I've browsed this. 15:11:02

11 Q. Okay. In any of the materials  
12 you reviewed and considered in connection  
13 with this case, did you review anything that  
14 contained the representations that you saw on  
15 Page 176 that I read to you? 15:11:16

16 MR. FLUHR: Objection.

17 Q. (BY MR. FORD) Sorry, the page  
18 ending in 176.

19 MR. FLUHR: Objection.

20 A. I'm sorry, do you mean the 15:11:24  
21 Bates number?

22 Q. (BY MR. FORD) I mean the --  
23 yes, the Bates number ending in 176 --

24 A. Thank you.

25 Q. -- the portion I read to you, 15:11:35

Page 264

1       the question and answer beginning, "Where can  
2       I check the blockchain ledger?"

3           A.       And I'm sorry, I've lost track  
4       of where we are with all of the page turning.

5           Q.       No, that's okay. Are you with       15:11:47  
6       me on Page --

7           A.       I'm with you.

8           Q.       -- the page ending on Page 176?

9           A.       I am, yes, sir.

10          Q.       Okay.                                   15:11:51

11          A.       And I'm with you on the  
12       paragraph, "You can check the ledger for  
13       StockX NFT through Etherscan," et cetera, et  
14       cetera, yes.

15          Q.       Uh-huh. Did you see StockX       15:11:55  
16       make those representations to consumers in  
17       any of the pages that you did review in  
18       forming your opinions?

19           MR. FLUHR: Objection.

20          A.       I can't recall if I saw this       15:12:07  
21       exact language. Certainly there were a  
22       mixture of communications related to what is  
23       on-chain, what is not on-chain, what can be  
24       traced where, and what page to find various  
25       information on.                                   15:12:26

Page 265

1                   So not -- not a black-and-white  
2 answer, but I've seen similar narratives.

3                   Q.         (BY MR. FORD) Okay. Does any  
4 of the -- does the fact of any of these  
5 disclosures from StockX to customers change      15:12:38  
6 any of the opinions that you reference in  
7 your report to the extent you did not see  
8 them or consider them prior to today?

9                   A.         So it doesn't change it.

10          And -- and let me explain my thinking here.      15:12:53

11                   There were comments throughout  
12 that were covering a variety of informational  
13 purposes. Some of those more loudly  
14 proclaiming blockchain functionality, some of  
15 them in a more bespoke way responding to a      15:13:16  
16 particular question or putting up a -- an  
17 FAQ.

18                   I think for me, weighing all of  
19 those things relative to what actually  
20 happened is the most important aspect of      15:13:31  
21 that.

22                   And so when I see the CEO talk  
23 about a direct connection to the blockchain  
24 one to one or the broader context of NFTs  
25 being conveyed as sort of the colloquial NFT,    15:13:46

Page 281

1 to believe that there's something here more  
2 than the physical asset to be able to drive  
3 the pricing in the way that it did.

4 And so the comments here are  
5 really in support of some of the messages 15:31:12  
6 that I encountered from consumers opining on,  
7 what it is that we're paying the additional  
8 funds for, for example, above and beyond the  
9 price of a shoe.

10 Q. (BY MR. FORD) So is it your 15:31:24  
11 opinion that the prices consumers were  
12 willing to pay for Vault NFTs was driven by  
13 those consumers' valuation of the, as you put  
14 it, exclusive benefits that StockX was  
15 offering? 15:31:43

16 MR. FLUHR: Objection.

17 A. My opinion is that consumers  
18 believed they were getting a bundle of rights  
19 and benefits in addition to vaulting and paid  
20 a premium for those rights and benefits. 15:31:56

21 Q. (BY MR. FORD) And I -- I -- I  
22 know I hate to keep harping on this, but it  
23 is a point of some confusion for me, because  
24 in your report you describe the vault service  
25 and the trading service as distinct services. 15:32:09

1                   And are you -- is it your  
2                   opinion that the trading service was part of  
3                   a bundle of rights and benefits for which  
4                   consumers were paying a premium in addition  
5                   to vaulting?

15:32:24

6                   MR. FLUHR: Objection.

7                   A.        Yeah, so I'm sorry to create  
8                   any confusion related to this. I guess my  
9                   blind spot is when we talk about  
10                  transactions, I'm thinking about on-chain  
11                  transactions consumer-to-consumer,  
12                  peer-to-peer, who are purchasing physical  
13                  goods or assets. And so what happens in the  
14                  transaction arena at StockX, I -- I don't  
15                  know.

15:32:35

16                  And so, therefore, at the risk  
17                  of not answering the question, my view isn't  
18                  that -- my view is void of whether or not  
19                  that transaction process that I'm sort of  
20                  blind to is -- is relevant.

15:32:48

15:33:05

21                  What I'm really referring to is  
22                  the vault capability and the ability for a  
23                  consumer to trade that physical asset, or  
24                  sell that physical asset, without having to  
25                  physically go get that out of their --

15:33:20

Page 283

1 wherever you keep shoes -- closet, bookshelf,  
2 whatever, right, and ship it to the next  
3 consumer.

4                  Does that help?

5                  Q.            (BY MR. FORD) I think it does.        15:33:31  
6                  So if I understand your  
7 testimony correctly, you believe that  
8 consumers understood what they were buying  
9 with a Vault NFT to include a vaulting and  
10 storage service, a transaction service that      15:33:43  
11 allowed the computer to -- consumer to trade  
12 that physical asset without having to  
13 physically store it themselves, and a third  
14 category of additional exclusive benefits.

15                  Is that fair?    15:34:00

16                  A.            Yes.

17                  Q.            Okay. What did you do to  
18 determine what value consumers placed on each  
19 of those three components of the Vault NFT  
20 that they were buying?    15:34:15

21                  MR. FLUHR: Objection.

22                  A.            So it -- you know, look,  
23 they're paying a substantial premium,  
24 sometimes thousands of percent above the  
25 price of the physical shoe.                                    15:34:27

Page 284

1                   So on its face, there may be  
2                   some appreciable difference between the shoe  
3                   and purchasing that NFT because they're  
4                   saving some money through this vaulting  
5                   process.

15:34:42

6                   It seems illogical that that's  
7                   hundreds or thousands of percents in  
8                   multiples, right?

9                   And so based on the evidence  
10                  that I've seen, people didn't say, we are       15:34:55  
11                  buying this at a premium because I get to  
12                  vault my sneakers and I own these shoes.

13                  It's my opinion that people saw  
14                  this as a distinct product that it had its  
15                  own digital asset in the form of an image and     15:35:10  
16                  all of these other rights and benefits that  
17                  would be part of that purchase if I'm a  
18                  consumer. And that's what they were paying  
19                  the difference for.

20                  Q.        (BY MR. FORD)   Have you heard       15:35:23  
21                  of the term "conjoint analysis"?

22                  A.        I have not.

23                  Q.        Have you ever done any form of  
24                  survey or analysis intended to or designed to  
25                  understand how consumers value different       15:35:39

Page 302

1           A.       Yes. But, again, it's  
2 potentially relevant to other arguments I  
3 make and, therefore, part of other areas of  
4 the report.

5           Q.       Yeah. So just maybe if I can       16:05:36  
6 try to isolate two concepts. One is the  
7 analysis you did and its conclusions from  
8 what flows from those conclusions.

9                   Do -- do you understand that  
10 separation?    16:05:52

11           A.       Yes.

12           Q.       Okay. The former category, am  
13 I right that that's set out on Page 49, 50,  
14 and the top of 51?

15           A.       I believe that's right.              16:05:59

16           Q.       Okay. Let's start with what is  
17 a comparative price analysis?

18           A.       So as you read, it's really  
19 about understanding what the Vault NFT price  
20 was in comparison to the exact same shoe       16:06:16  
21 without the NFT.

22           Q.       I appreciate that that is  
23 the -- the analysis you did.

24                   I'm asking: Do you understand  
25 the term "comparative price analysis" to have   16:06:29

Page 303

1 any more general meaning?

2 A. I -- I'm not an economist, so  
3 if that's a term of art, I'm unaware.

4 Q. Okay.

5 A. Our simple task here, my 16:06:38  
6 charter here was to better understand whether  
7 or not the NFT version of the shoes were  
8 trading at a different price than the  
9 physical shoe itself.

10 Q. I see. So the hypothesis as it 16:06:49  
11 were that you were testing was whether the  
12 prices of the NFT versions of a particular  
13 model of shoe was trading at a different  
14 price than the physical shoe?

15 A. Right, or trading at the same 16:07:04  
16 price.

17 Q. Or trading at the same price?

18 A. Of course.

19 Q. The same or different price. I 16:07:13  
20 understand.

21 Before you -- well, let me take  
22 a step back, actually.

23 You said that your task here  
24 was to understand that.

25 Was that a specific assignment 16:07:27

Page 305

1           A.       -- performed an evaluation --

2           Q.       Oh, yeah. Sorry.

3           A.       -- things like that, but not  
4 specific to whatever that term is that you're  
5 using.

16:08:33

6           Q.       I apologize. I'm using the  
7 term as you use it in your report when you  
8 say you performed a comparative price  
9 analysis.

10           So using the term as you used  
11 it in your report, have you previously  
12 offered an expert opinion that included a  
13 comparative price analysis?

16:08:40

14           A.       So I've certainly compared  
15 assets one to another. I've certainly  
16 provided valuation relative to an asset based  
17 on comparative analysis. Has that made any  
18 testimony? I don't recall.

16:08:51

19           Q.       So you don't recall previously  
20 offering an expert opinion that included a  
21 comparative price analysis like the one  
22 you're offering in this case?

16:09:05

23           MR. FLUHR: Objection.

24           A.       Yeah, I don't remember if it  
25 was a component of any of the expert

16:09:14

Page 306

1       opinions.

2                     Q.       (BY MR. FORD)   Have you ever  
3       written any publications -- and if you want  
4       to refresh your recollection, in Exhibit B of  
5       your publications -- that included a                     16:09:27  
6       comparative price analysis like the one you  
7       offer in this case?

8                     A.       I don't believe so.

9                     Q.       Do you have any understanding  
10      of what the term "price formation" means?             16:09:36

11                  A.       No.

12                  Q.       Starting on Page 49 of your  
13      report, you write: "If no additional value  
14      or perceived product or service were  
15      associated with the Vault NFT beyond the             16:09:55  
16      claimed the physical product, then one would  
17      expect the Nike Vault NFTs to sell at similar  
18      prices to the associated physical non-NFT  
19      shoes."

20                  Is that accurate?                     16:10:06

21                  A.       Correct.

22                  Q.       And is that a correct statement  
23      of the hypothesis you were testing in this  
24      case with your comparative price analysis?

25                  A.       It was a curiosity to satisfy             16:10:16

Page 308

1                   What did you do to determine  
2                   whether or not Vault NFTs were trading at  
3                   different prices from the non-NFT versions of  
4                   the same shoes?

5                   A.         So you can see at the top of           16:11:34  
6                   Page 50 the result of that. So it is  
7                   literally a comparison of the exact same shoe  
8                   in its NFT form and the non-NFT form with the  
9                   price delta being the yellow bar on this  
10                  side.   16:11:54

11                  Q.         So just to make sure that I  
12                  understand correctly, we can look at the  
13                  leftmost set of three. The -- the box reads:  
14                  "Nike Dunk Low Off-White Lot 50 - US M 8.5."

15                  And StockX offered some of           16:12:11  
16                  those shoes as an NFT on its marketplace and  
17                  the non-NFT version of those shoes was also  
18                  available on the StockX marketplace; is that  
19                  correct?

20                  A.         That's correct.                           16:12:24

21                  Q.         And the number 7500 here, am I  
22                  correct that that represents the highest  
23                  completed transaction price for the NFT  
24                  version of that shoe from the time period  
25                  January 18, 2022, through February 2nd, 2022?    16:12:47

Page 317

1 A. Yes.

2 Q. Do you have an understanding of  
3 what those mean or refer to?

4 A. Generally speaking, yes. I'm  
5 not sure the context at which you're asking 16:23:23  
6 it.

7 Q. Sure. So what I'm trying to  
8 understand is, on Page 50 when you say that  
9 the highest sale price of a Nike Dunk Low  
10 Off-White Lot 50 during the time period of 16:23:36  
11 your analysis was \$7,500 --

12 A. Right.

13 Q. -- how many Vault NFTs were  
14 sold for that price during the period in  
15 question? 16:23:50

16 MR. FLUHR: Objection.

17 A. One.

18 Q. (BY MR. FORD) And is that true  
19 for the other NFT prices shown on the chart  
20 on Page 50? 16:24:07

21 A. I believe so.

22 Q. And what about for the non-NFT  
23 prices, do those represent also one  
24 transaction at that price?

25 A. I believe that's right. 16:24:17

Page 318

1           Q.       And so to the extent it's  
2       useful to look at Page 13 --

3           A.       Uh-huh.

4           Q.       -- is it your understanding  
5       that for a NFT or non-NFT version of a shoe       16:24:29  
6       to sell on StockX's platform, one consumer  
7       would have to put in a -- terms as they're  
8       used -- an ask, and one person would have to  
9       put in a bid at matching prices?

10          A.       Okay. Yes.                                   16:24:56

11          Q.       That is your understanding?

12          A.       That is my understanding.

13          Q.       Do you know how many -- how  
14       many total transactions there were on StockX  
15       for each of the NFT versions of the shoes you       16:25:25  
16       set out here during the time period of your  
17       analysis?

18          A.       I do not.

19          Q.       Do you know how many total  
20       transactions there were on StockX for each of       16:25:39  
21       the non-NFTs versions of the shoes you set  
22       out here during the time period of your  
23       analysis?

24          A.       I do not.

25          Q.       Do you know what the average                   16:25:47

Page 319

1 price of a Vault NFT for each of these shoes  
2 was during the time period of your analysis?

3 A. Not without running those  
4 numbers, no.

5 Q. Do you know the average price 16:26:00  
6 of a non-NFT version of each of these shoes  
7 on StockX's marketplace during the time  
8 period of your analysis?

9 A. I do not.

10 Q. Am I correct that the yellow 16:26:09  
11 bar essentially represents A minus B, where A  
12 is the NFT price and B is the non-NFT  
13 pricing?

14 A. It is a delta between the two,  
15 correct. 16:26:26

16 Q. Other than doing the  
17 subtraction necessary to get to that delta,  
18 was there any other analysis you performed of  
19 either the NFT or non-NFT prices that you set  
20 out on Page 50? 16:26:42

21 MR. FLUHR: Objection.

22 A. I think that was the most  
23 notable effort.

24 Q. (BY MR. FORD) Okay. And then  
25 you calculated this at the end of the first 16:26:51

Page 329

whether the NFT delta that you were observing was the result of a perception among consumers that the Vault NFTs were scarce and exclusive?

5 MR. FLUHR: Objection. 16:37:36

6           A.        Yeah. So, again, this is the  
7       broader analysis of comparing behaviors and  
8       patterns here to what exist in other  
9       platforms, launches, and NFT projects.

10 It's true across all of those 16:37:48  
11 that the more scarce an asset is, the more  
12 valuable it becomes in the eyes of a  
13 consumer.

14 And so by adding elements of  
15 scarcity here, it's reasonable to believe 16:38:02  
16 that that's exactly what consumers understood  
17 that to mean.

18 Q. (BY MR. FORD) And in your  
19 price analysis as you set it out on Pages 49  
20 to 51, do you anywhere discuss the issue of 16:38:14  
21 scarcity?

A. Not in that section, no.

23 Q. You mentioned just now and a  
24 minute or two before that there was a broader  
25 analysis of comparing behaviors and patterns 16:38:36